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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 801

TD 9227

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Balanced System for Measuring Organizational and Employee Performance
within the Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the balanced system for measuring organizational and employee performance within the IRS. The temporary regulations prospectively amend the existing final regulations in 26 CFR Part 801 to clarify when quantity measures, which are not tax enforcement results, may be used in measuring organizational and employee performance. The portions of this document that are final regulations provide necessary cross-references to the temporary regulations. These regulations affect internal operations of the IRS and the systems it employs to evaluate the performance of organizations within the IRS. The text of the temporary regulations also serves as the text of proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on October 17, 2005.

Applicability Date: For dates of applicability, see §§801.7 and 801.8T.

FOR FURTHER INFORMATION CONTACT: Neil Worden, (202) 283-7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends final regulations in 26 CFR Part 801 (the Final Regulations) that implement the Balanced System for Measuring Organizational and Employee Performance within the IRS. The Final Regulations were published in the **Federal Register** on August 6, 1999 (64 FR 42834-42837). The Final Regulations emanated from section 1201 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685, 713 (1998) (the Act), which required the IRS to establish a performance management system for those employees covered by 5 U.S.C. 4302 that, among other things, establishes “goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the IRS’ performance planning procedures, including those established under the Government Performance and Results Act of 1993, division E of the Clinger-Cohen Act of 1966 . . . , Revenue Procedure 64-22 . . . , and taxpayer service surveys.” Section 1201 further required the IRS to use “such goals and objectives to make performance distinctions among employees or groups of employees,” and to use “performance assessments as a basis for granting employee awards, adjusting an employee’s rate of basic pay, and other appropriate personnel actions”

In addition, section 1201 of the Act required that the IRS performance management system comply with section 1204, which prohibits the use of

“records of tax enforcement results” (ROTERRs) in the evaluation of IRS employees or to suggest or impose production goals for such employees. Section 1204, however, does not prohibit the use of quantity measures in evaluating organizational and employee performance. The temporary regulations in this document amend the existing regulations in part 801 to clarify when quantity measures may be used in measuring organizational and employee performance.

Explanation of Provisions

The final regulations provide guidance and direction for the establishment of a balanced performance measurement system for the IRS. The three elements of this balanced measurement system are (1) customer satisfaction measures, (2) employee satisfaction measures and (3) business results measures. These organizational measures may be used to evaluate the performance of, or to impose or suggest production goals for, any organizational unit.

The temporary regulations contained in this document relate primarily to the business results measures. Business results are measured through quality measures and quantity measures. Quality measures are based on reviews of a statistically valid sample of cases handled by certain organizational units such as examination, collection and Automated Collection System units. The quality review of other work units is determined according to criteria established by the Commissioner or his delegate.

The IRS and Treasury Department have determined that the provisions of the existing Part 801 regulations that limit the use of quantity measures in evaluating organizational units and imposing or suggesting production goals for employees restrict the IRS' ability to monitor program performance and track effectiveness of operations, and have caused confusion as to what types of data or measures may be discussed between managers and employees and reflected in manager and employee goals. These temporary regulations remove the limitations on the use of quantity measures in evaluating the performance of, or imposing or suggesting goals for organizational units. These temporary regulations also remove the limitations on the use of quantity measures to impose or suggest goals for employees. The regulations continue to provide that performance measures based on quantity measures will not be used to evaluate the performance of such employees. The temporary regulations do not affect the continuing prohibition on the use of ROTERS to evaluate employee performance or to impose or suggest production quotas or goals for any employee.

Special Analyses

It has been determined that this is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary

regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Karen F. Keller, Office of Associate Chief Counsel (General Legal Services). However, other personnel from the IRS participated in their development.

List of Subjects in 26 CFR Part 801

Organization and functions (Government agencies), Federal employees

Amendments to the Regulations

Accordingly, 26 CFR Part 801 is amended as follows:

PART 801--BALANCED SYSTEM FOR MEASURING ORGANIZATIONAL AND INDIVIDUAL PERFORMANCE WITHIN THE INTERNAL REVENUE SERVICE

Paragraph 1. The authority citation for Part 801 continues to read in part as follows:

Authority: 5 U.S.C. 9501 * * *

Par. 2. Section 801.1 is amended by:

1. Adding the new center heading.
2. Removing and reserving paragraph (b).

The addition reads as follows:

REGULATIONS APPLICABLE BEFORE OCTOBER 17, 2005

§801.1 Balanced performance measurement system; in general.

* * * * *

Par. 3. Section 801.7 is added to read as follows:

§801.7 Effective dates.

The provisions of §§801.1 through 801.6 apply before October 17, 2005. For the applicable provisions on or after October 17, 2005, see §§801.1T through 801.7T.

Par. 4. Sections 801.1T through 801.8T and a new center heading are added to read as follows:

REGULATIONS APPLICABLE ON OR AFTER OCTOBER 17, 2005

§801.1T Balanced performance measurement system; in general (temporary).

(a) In general. (1) The regulations in this part 801 implement the provisions of sections 1201 and 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-106, 112 Stat. 685, 715-716, 722) (the Act) and provide rules relating to the establishment by the Internal Revenue Service (IRS) of a balanced performance measurement system.

(2) Modern management practice and various statutory and regulatory provisions require the IRS to set performance goals for organizational units and to measure the results achieved by those units with respect to those goals. To fulfill these requirements, the IRS has established a balanced performance measurement system, composed of three elements: Customer Satisfaction Measures; Employee Satisfaction Measures; and Business Results Measures. The IRS is likewise required to establish a performance evaluation system for individual employees.

(b) [Reserved].

§801.2T Measuring organizational performance (temporary).

The performance measures that comprise the balanced measurement system will, to the maximum extent possible, be stated in objective, quantifiable, and measurable terms and will be used to measure the overall performance of various operational units within the IRS. In addition to implementing the requirements of the Act, the measures described here will, where appropriate, be used in establishing performance goals and making performance evaluations established, inter alia, under Division E, National Defense Authorization Act for Fiscal Year 1996 (the Clinger-Cohen Act of 1996) (Public Law 104-106, 110 Stat. 186, 679); the Government Performance and Results Act of 1993 (Public Law 103-62, 107 Stat. 285); and the Chief Financial Officers Act of 1990 (Public Law 101-576, 108 Stat. 2838). Thus, organizational measures of customer satisfaction, employee satisfaction, and business results (including quality and quantity measures as described in §801.6T) may be used to evaluate the performance of or to impose or suggest production goals for, any organizational unit.

§801.3T Measuring employee performance (temporary).

(a) In general. All employees of the IRS will be evaluated according to the critical elements and standards or such other performance criteria as may be established for their positions. In accordance with the requirements of 5 U.S.C. 4312, 4313, and 9508 and section 1201 of the Act, the performance criteria for each position as are appropriate to that position, will be composed of elements that support the organizational measures of Customer Satisfaction, Employee

Satisfaction, and Business Results; however, such organizational measures will not directly determine the evaluation of individual employees.

(b) Fair and equitable treatment of taxpayers. In addition to all other criteria required to be used in the evaluation of employee performance, all employees of the IRS will be evaluated on whether they provided fair and equitable treatment to taxpayers.

(c) Senior Executive Service and special positions. Employees in the Senior Executive Service will be rated in accordance with the requirements of 5 U.S.C. 4312 and 4313 and employees selected to fill positions under 5 U.S.C. 9503 will be evaluated pursuant to workplans, employment agreements, performance agreements, or similar documents entered into between the IRS and the employee.

(d) General workforce. The performance evaluation system for all other employees will—

(1) Establish one or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance;

(2) Require periodic determinations of whether each employee meets or does not meet the employee's established retention standards;

(3) Require that action be taken in accordance with applicable laws and regulations, with respect to employees whose performance does not meet the established retention standards;

(4) Establish goals or objectives for individual performance consistent with the IRS's performance planning procedures;

(5) Use such goals and objectives to make performance distinctions among employees or groups of employees; and

(6) Use performance assessments as a basis for granting employee awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions, in accordance with applicable laws and regulations.

(e) Limitations. (1) No employee of the IRS may use records of tax enforcement results (as described in §801.6T) to evaluate any other employee or to impose or suggest production quotas or goals for any employee.

(i) For purposes of the limitation contained in this paragraph (e), employee has the meaning as defined in 5 U.S.C. 2105(a).

(ii) For purposes of the limitation contained in this paragraph (e), evaluate includes any process used to appraise or measure an employee's performance for purposes of providing the following:

(A) Any required or requested performance rating .

(B) A recommendation for an award covered by Chapter 45 of Title 5; 5 U.S.C. 5384; or section 1201(a) of the Act.

(C) An assessment of an employee's qualifications for promotion, reassignment, or other change in duties.

(D) An assessment of an employee's eligibility for incentives, allowances, or bonuses.

(E) Ranking of employees for release/recall and reductions in force.

(2) Employees who are responsible for exercising judgment with respect to tax enforcement results in cases concerning one or more taxpayers may be

evaluated on work done on such cases only in the context of their critical elements and standards.

(3) Performance measures based in whole or in part on quantity measures (as described in §801.6T) will not be used to evaluate the performance of any non-supervisory employee who is responsible for exercising judgment with respect to tax enforcement results (as described in §801.6T).

§801.4T Customer satisfaction measures (temporary).

The customer satisfaction goals and accomplishments of operating units within the IRS will be determined on the basis of information gathered through various methods. For example, questionnaires, surveys and other types of information gathering mechanisms may be employed to gather data regarding customer satisfaction. Information to measure customer satisfaction for a particular work unit will be gathered from a statistically valid sample of the customers served by that operating unit and will be used to measure, among other things, whether those customers believe that they received courteous, timely, and professional treatment by the IRS personnel with whom they dealt. Customers will be permitted to provide information requested for these purposes under conditions that guarantee them anonymity. For purposes of this section, customers may include individual taxpayers, organizational units, or employees within the IRS and external groups affected by the services performed by the IRS operating unit.

§801.5T Employee satisfaction measures (temporary).

The employee satisfaction numerical ratings to be given operating units within the IRS will be determined on the basis of information gathered through various methods. For example, questionnaires, surveys, and other information gathering mechanisms may be employed to gather data regarding satisfaction. The information gathered will be used to measure, among other factors bearing upon employee satisfaction, the quality of supervision and the adequacy of training and support services. All employees of an operating unit will have an opportunity to provide information regarding employee satisfaction within the operating unit under conditions that guarantee them anonymity.

§801.6T Business results measures (temporary).

(a) In general. The business results measures will consist of numerical scores determined under the quality measures and the quantity measures described elsewhere in this section.

(b) Quality measures. Quality measures will be determined on the basis of a review by a specially dedicated staff within the IRS of a statistically valid sample of work items handled by certain functions or organizational units determined by the Commissioner or his delegate such as the following:

(1) Examination and collection units and Automated Collection System Units (ACS). The quality review of the handling of cases involving particular taxpayers will focus on such factors as whether IRS personnel devoted an appropriate amount of time to a matter, properly analyzed the facts, and complied with statutory, regulatory, and IRS procedures, including timeliness, adequacy of notifications, and required contacts with taxpayers.

(2) Toll-free telephone sites. The quality review of telephone services will focus on such factors as whether IRS personnel provided accurate tax law and account information.

(3) Other work units. The quality review of other work units will be determined according to criteria prescribed by the Commissioner or his delegate.

(c) Quantity measures. Quantity measures will consist of outcome-neutral production and resource data that does not contain information regarding the tax enforcement result reached in any case that involves particular taxpayers. Examples of quantity measures include, but are not limited to--

- (1) Cases started;
- (2) Cases closed;
- (3) Work items completed;
- (4) Customer education, assistance, and outreach efforts completed;
- (5) Time per case;
- (6) Direct examination time/out of office time;
- (7) Cycle time;
- (8) Number or percentage of overage cases;
- (9) Inventory information;
- (10) Toll-free level of access; and
- (11) Talk time.

(d) Definitions--(1) Tax enforcement results. A tax enforcement result is the outcome produced by an IRS employee's exercise of judgment in recommending or determining whether or how the IRS should pursue

enforcement of the tax laws. Examples of tax enforcement results include a lien filed, a levy served, a seizure executed, the amount assessed, the amount collected, and a fraud referral. Examples of data that are not tax enforcement results include a quantity measure and data derived from a quality review or from a review of an employee's or a work unit's work on a case, such as the number or percentage of cases in which correct examination adjustments were proposed or appropriate lien determinations were made.

(2) Records of tax enforcement results. Records of tax enforcement results are data, statistics, compilations of information or other numerical or quantitative recordations of the tax enforcement results reached in one or more cases. Such records may be used for purposes such as forecasting, financial planning, resource management, and the formulation of case selection criteria. Records of tax enforcement results may be used to develop methodologies and algorithms for use in selecting tax returns to audit. Records of tax enforcement results do not include tax enforcement results of individual cases when used to determine whether an employee exercised appropriate judgment in pursuing enforcement of the tax laws based upon a review of the employee's work on that individual case.

§801.7T Examples (temporary).

(a) The rules of §801.3T are illustrated by the following examples:

Example 1. (i) Each year Division A's Examination and Collection functions develop detailed workplans that set goals for specific activities (e.g., number of audits or accounts closed) and for other quantity measures such as cases started, cycle time, overage cases, and direct examination time. These quantity measure goals are developed nationally and by Area Office based on

budget allocations, available resources, historical experience, and planned improvements. These plans also include information on measures of quality, customer satisfaction, and employee satisfaction. Results are updated monthly to reflect how each organizational unit is progressing against its workplan, and this information is shared with all levels of management.

(ii) Although specific workplans are not developed at the Territory level, Headquarters management expects the Area Directors to use the information in the Area plans to guide the activity in their Territories. For 2005, Area Office 1's workplan has a goal to close 1,000 examinations of small business corporations and 120,000 taxpayer delinquent accounts (TDAs), and there are 10 Exam Territories and 12 Collection Territories in Area Office 1. While taking into account the mix and priority of workload, and available staffing and grade levels, the Examination Area Director communicates to the Territory Managers the expectation that, on average, each Territory should plan to close about 100 cases. The Collection Area Director similarly communicates to each Territory the expectation that, on average, they will close about 10,000 TDAs, subject to similar factors of workload mix and staffing.

(iii) Similar communications then occur at the next level of management between Territory Managers and their Group Managers, and between Group Managers and their employees. These communications will emphasize the overall goals of the organization and each employee's role in meeting those goals. The communications will include expectations regarding the average number of case closures that would have to occur to reach those goals, taking into account the fact that each employee's actual closures will vary based upon the facts and circumstances of specific cases.

(iv) Setting these quantity measure goals, and the communication of those goals, is permissible because case closures are a quantity measure. Case closures are an example of outcome-neutral production data that does not specify the outcome of any specific case such as the amount assessed or collected.

Example 2. In conducting a performance evaluation, a supervisor is permitted to take into consideration information the supervisor has developed showing that the employee failed to propose an appropriate adjustment to tax liability in one of the cases the employee examined, provided that information is derived from a review of the work done on the case. All information derived from such a review of individual cases handled by the employee, including time expended, issues raised, and enforcement outcomes reached should be considered and discussed with the employee and used in evaluating the employee.

Example 3. When assigning a case, a supervisor is permitted to discuss with the employee the merits, issues, and development of techniques of the case based upon a review of the case file .

Example 4. A supervisor is not permitted to establish a goal for proposed adjustments in a future examination.

(b) [Reserved].

§801.8T Effective dates (temporary).

(a) The provisions of §§801.1T through 801.7T apply on or after October 17, 2005.

(b) The applicability of §§801.1T through 801.7T expires on or before October 14, 2008.

/s/ Mark E. Matthews
Deputy Commissioner for Services and Enforcement.

Approved: October 3, 2005

/s/ Eric Solomon
Acting Deputy Assistant Secretary (Tax Policy)